DOCUMENT RESUME

ED 207 652 JC 810 577

AUTHOR Davies, Alton L.
TITLE Trustee Liability and Legal Responsibility.
PUB DATE 24 Sep 81
NOTE 11p.; Paper presented at the Annual Convention of the Association of Community College Trustees (12th, Boston, MA, September 22-26, 1981).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS College Administration; College Presidents; Community Colleges; *Court Litigation; *Legal Problems; *Legal Responsibility; Policy Formation; *School Policy; *Trustees; Two Year Colleges
IDENTIFIERS *Kansas City Kansas Community College

ABSTRACT

Litigation over actions and policies in higher education is becoming increasingly common, and college trustees can expect to be touched by it, as they are legally and ultimately responsible for what transpires on campus. Trustees must work as a team with college presidents in the development of institutional policies, as they will share the same vulnerability to legal action. To lessen this vulnerability and to increase chances of success, several strategies can be followed. First, an attorney who is current in state and federal statutes affecting education should be hired to advise in operational and hiring policies. Second, the board of trustees must provide complete support to the president in carrying out institutional policies. Third, thorough and ongoing documentation should be maintained for all actions that might lead to a suit, in areas such as interviewing and hiring practices, employer/employee grievance actions, performance evaluations, student complaints, and terminations and dismissals. Finally, policies should be written, policy implementation should be consistent, and precedents should be relied upon whenever possible. A review of some of the legal actions in which the Board of Trustees of Kansas City Community College has been involved demonstrates the importance of documentation and warns of the time-consuming and costly nature of suits. (The paper provides descriptions of the causes and outcomes of several suits.) (KL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED207652

JC 810 577

TRUSTEE LIABILITY AND LEGAL RESPONSIBILITY

Alton L. Davies
President
Kansas City Community College
Kansas City, KS

Paper presented at the Annual Convention of the Association of Community College Trustees (12th, Boston, MA, September 22-26, 1981)

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Alton L. Davies

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

Slightly more than a year ago, I was on a panel similar to this one, in Jackson Hole, Wyoming. On that occasion I developed laryngitis and few in the audience could hear me. You're not going to be that lucky. I have my voice today.

This whole concept of Trustee Liability and Legal Problems is a fascinating one. Unfortunately for you Trustees, legal problems are rapidly becoming so widespread that few of you will escape your terms of office untouched.

According to a recent article in The Kansas City Times, "Institutions of higher learning across the country - small and large, private and public - are being hauled into court as defendants with ever increasing frequency. Some of the disputes that judges are hearing today would have been resolved informally in the past; others stem from the rights that faculty and students obtained during the 1970s thanks to federal mandates in such areas as employment, athletics and the rights of women, minorities and the handicapped. Lawyers for the schools point out that they are winning many of the cases, but at an increasing cost to their clients."

Much of the popularity of litigation as a remedy must be blamed on federal regulations, shriveling budgets which necessitate cutbacks in services and in faculty and staff a new willingness, even eagerness, to have one's day in court.

There are those of you who feel that a change in Administrations at the federal level will cause the problem to go away. I fear you are indulging in wishful thinking although I would agree we can probably expect the pendulum to swing somewhat to the other

side. But, the question of rights will not disappear.

So, you Trustees who may be physically present on your campus only monthly, must realize that you are truly vulnerable. If you can't stand the heat, you'd better stay out of the kitchen. You are, after all, legally and ultimately responsible for what transpires on your campuses. You and your fellow Board members are the College.

Your Presidents are your representatives. They only administer the policies. They do not make them. However, my first piece of advice to you is that you had better work as a team in the development of those policies. In that way you will know what is in your manuals. It is then the President's responsibility to see that those policies are carried out uniformly.

In employing your President, you have delegated the authority to administer the institution. Like you, the President must then accept the same vulnerability. It is not a pleasant fact of life, but it is a reality. It's why you pay such exorbitant salaries!

There are some things you can do which will lessen, but never eliminate, the vulnerability I have been speaking of. Still, you must recognize that there are no guarantees. It is almost inevitable that you and your colleges will be involved in some of the legal problems I will mention if you aren't already. They are costly problems in time and money. They take a terrible toll on your President, and they will take a toll on you.

First, you must hire an attorney in whom you have collective trust. Demand that he be current on state and federal statutes which affect your operation. Use the attorney to develop and revise your operational and hiring policies. Ask his advice.

Accept it. Or, hire a new one.

Don't be like the Board member who exasperatedly told the attorney, "There's only one legal way to handle our problem!"

"Legal way? What is it?" asked the attorney.

"Just as I suspected," the Board member said. "You don't know!"

Following your attorney's advice will not eliminate your vulnerability, but it is the best first line of defense I know of.

Secondly, your President is on the firing line every day. It is the President who will feel the heat first and most consistently. The President deserves your support. If you can't do that, you probably need a new President. I don't mean that the President deserves your unquestioning loyalty, but in matters of carrying out your policies, your support should be complete. An open show of divisiveness will weaken your positions.

The third point I would have you remember involves documentation. You must insist on thorough and on-going documentation for all actions which could ultimately lead to legal action. Such areas as interviewing and hiring practices, employer/employee grievance actions, performance evaluations, reprimands, student complaints, and, of course, terminations and dismissals require documentation. I'm sure you can think of many other areas.

Unfortunately, if asked which of the three points previously mentioned will protect you from law suits, the answer must be "#4. None of the Above!" Nothing will eliminate the very real possibility, even probability, that you will be sued. But, they will provide you with a basis for the defense for any action taken against you.

In making decisions you must have policies. You must be consistent in implementing those policies, and you should rely on precedents either from your own institutions or from others.

If you have a policy, if you follow precedent and if you have been consistent there is less chance that your actions may be found to be either "capricious" or "arbitrary."

It is not uncommon to see phrases such as "may be," "shall be," "serious," "habitual," "expected," "unbecoming," or "will be considered" in policy handbooks or contracts. Such phrases allow for greater flexibility of action. Unfortunately, they are open to interpretation.

To make you more aware of the possible costs in time and money, as well as to make you understand a little better the pressures possible in the operation of your institutions, I'd like to share a few of my grizzly experiences with you.

At our College we have a large nursing program which offers clinical experiences in numerous area hospitals. Clinical experiences are clearly required as part of the curriculum. Each student knows this and signs a statement spelling out, in detail, what is expected.

A student who chose to skip six consecutive clinical experiences and who attended lecture sections sporadically, challenged the faculty decision to drop her from our program. Without supervision and instruction she was considered "dangerous" by our faculty and the hospitals.

She filed a grievance which was carried through four steps. In each case, the faculty position was upheld.

Step five is a hearing before the full Board. Present were

all Board members, the Administration, all nursing faculty, the student, her parents and two attorneys. After a three hour hearing, the result was the same. The student was not allowed to continue. Documentation saved the day.

Or consider the case of an instructor who openly advocates in his classes the non-payment of federal income taxes because he feels they are unconstitutional.

After a two year investigation by the I.R.S. the faculty member is indicted by a Grand Jury, a warrant is issued and he is arrested on campus.

The Board, acting on advice from the attorney, suspended him with pay until the case came to trial. As President, I appreared at the trial to validate the documents. He was found guilty of two counts of failure to file income taxes - a misdemeanor.

Logically, the Board moved to terminate him.

Enter the union and a due process hearing request which eventually resulted in a two-to-one favorable ruling for the Board.

Next a hearing before the Board to argue the due process findings. The Board again affirmed its decision.

The union's position was that a misdemeanor does not constitute a "serious crime" as listed in the handbook.

Foolishly and naively, we all considered the case closed when the faculty member began his one year term at the Honor Farm at the Federal Penitentiary in Leavenworth.

A new issue. There's always a new issue! When does the Board stop paying benefits such as insurance? The union contended that until all litigation was settled, the Board had to continue paying these benefits through all appeals. The courts

have decided otherwise. We await the Union's response to see if this becomes a test case of a yet unsettled issue in Kansas.

The longest ordeal I have personally been involved with was a six day due process hearing on the dismissal of two nursing faculty members. After giving more than two hundred pages of testimony in almost 3 days, I was, to say the least drained.

This case resulted from continuing personnel problems, and student problems, in our nursing program. In nine years, under three Directors, these faculty members had been problems. Dissension in the program nearly cost us our accreditation. The State Board of Nursing told us we had to correct the personnel problem or lose our accreditation. One visitor even mentioned these two faculty members as the source of the problem. A statement she later denied making! At that point I felt like the captain of the Titanic!

After non-renewing their contracts, the hearing was held, and the hearing committee upheld the faculty members. The non-binding vote went 2-1 against us.

After reviewing the transcripts and holding a hearing, the Board upheld the Administration's actions, and a suit followed. All Board members were required to give depositions as was I.

The court later found cause for the non-renewal and the faculty members were not re-employed. This case, too, awaits the Supreme Court of Kansas' decision.

The worst part of this case and the area in which we were admittedly on shaky ground was the lack of documentation of specific incidents. We have learned from that experience. But how does one document dissension which is really attitudinal?

Incidents which are clearly disruptive are hard to nail down. They lack specificity and are open to interpretation.

This case has cost us over $5,000 not counting the expenses of time devoted to the case.

We have had to appear before the E.E.O.C. on numerous occasions. That is an experience one doesn't easily forget. Unlike the courts, at E.E.O.C., you seem to be presumed to be guilty.

One E.E.O.C. complaint was filed because we did not interview a female with a Ph.D. Why she wasn't selected for an interview, I have no idea, but she wasn't. I have appeared twice on this issue and have submitted over 200 sheets of documentation. The E.E.O.C. found "probable cause" and eventually issued a "Right to Sue" letter. I expect it will eventually go to court.

Another E.E.O.C. complaint was filed by a woman not retained as a chairperson. After lengthy hearings, a "No Cause" letter was received. We thought that settled it.

As a result of the letter, the woman resigned by buying her contract as she can do under our Master Contract. It was automatic once her check was received.

Before the next Board meeting, I received a "Revised Determination" letter from the St. Louis office of E.E.O.C. stating that there may have been "cause."

At this point, the woman requested that her resignation be rejected. Something I had no power to do. She had bought her contract, and the Board chose not to rehire her.

A suit has been filed in District Court and my 3 hour deposition has been taken. It has already been two years, and I expect it will be two more. The cost involved? I don't even

want to think about it.

Another complaint resulted from a necessary reduction in force in 1972. One instructor who was not retained was a first year instructor who happened to be Hispanic. However, on his forms in our files, he had boldly scratched through the "Hispanic" classification and wrote "Caucasian" in red!

Once not retained, he complained to the Kansas Office of Civil Rights. The various hearings, etc., went on for seven years before it was finally disposed of successfully.

Even after the final hearing when the Commissioner found "no cause," his attorney, an employee of the Commission, wanted to file a court case against the Commission's findings.

Incidentally, at the time the complaint was lodged against us, the same instructor had filed similar complaints against Kenyon College in Ohio, against the Metropolitan Community Colleges of Kansas City, Missouri, the school district of Kansas City, Missouri, and, I feel, was looking hungrily at our neighbors to the south, Johnson County Community College.

These are just a few of the incidents I have personally experienced. It has been an education for me and for my Board.

I'm sure that Mark Berry will hear me out in advising you that knowing a little law can be a dangerous thing. Don't presume to out guess your attorney. Rely on him.

Again, you must have written policies, you must follow precedent and you must be consistent. Beyond that, you have only logic and common sense to guide you.

You are not automatically right because you are Board members. You must learn from your deficiencies and move to correct them.

In Jackson Hole, I told my audience to carry a lot of liability insurance. I would also add that one needs, most of all, to retain ones perspective. Do what you feel is right - and pray that the courts will agree with you.

Alton L. Davies, President
Kansas City Kansas Community College

NOV 13 1981

ERIC Clearinghouse for Junior Colleges
96 Powell Library Building
University of California
Los Angeles, California 90024